

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TYRICE MARIO BULLITT,

Defendant-Appellant.

UNPUBLISHED

March 18, 2008

No. 276426

Wayne Circuit Court

LC No. 06-010970-01

Before: Meter, P.J., and Sawyer and Wilder, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of three counts of assault with intent to murder, MCL 750.83, two counts of armed robbery, MCL 750.529, one count of first-degree home invasion, MCL 750.110a(2), two counts of felonious assault, MCL 750.82, and one count of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Defendant was sentenced to life imprisonment for the assault with intent to murder convictions, 5 to 10 years' imprisonment for the armed robbery convictions,¹ 2 to 20 years' imprisonment for the first-degree home invasion conviction, one to four years' imprisonment for the felonious assault convictions, and two years' imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm and remand for clarification of defendant's armed robbery sentences.

Defendant first contends that there was insufficient evidence to convict him of three counts of assault with intent to murder. We disagree.

When reviewing a claim of insufficient evidence, this Court reviews the record de novo. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). This Court reviews the

¹ Although the sentencing transcript indicates that defendant was sentenced to 5 to 40 years' imprisonment for each armed robbery conviction, the judgment of sentence provides that defendant was sentenced to five to ten years' imprisonment for each armed robbery conviction. It is not clear which sentence is correct. Because a court speaks through its written orders and pronouncements, this opinion lists defendant's armed robbery sentences as five to ten years' imprisonment for each count. *People v Vincent*, 455 Mich 110, 123; 565 NW2d 629 (1997). However, as noted *infra*, we direct the lower court on remand to articulate which armed robbery sentence is correct.

evidence in the light most favorable to the prosecutor and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *Id.*

The elements of assault with intent to commit murder are: (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder. *People v Brown*, 267 Mich App 141, 147; 703 NW2d 230 (2005). An assault arises from either an attempted battery or an unlawful act which places another in reasonable apprehension of receiving an immediate battery. *People v Nickens*, 470 Mich 622, 628; 685 NW2d 657 (2004). A battery is an intentional, unconsented to and harmful or offensive touching of the person of another, or of something closely connected with the person. *Id.* The intent to kill may be proven by inference from any facts in evidence. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). In light of the difficulty in proving an actor's state of mind, minimal circumstantial evidence of intent is sufficient. *Id.*

The record reflects that defendant, armed with a gun and a knife, broke into the condominium shared by Sheribia Rogers and her 15-year-old daughter, Kyishia Rogers. Defendant demanded that Sheribia and Kyishia give him their money, directed them to undress, handcuffed Sheribia, and repeatedly threatened to kill Sheribia and Kyishia, all the while pointing his gun or knife at them. On these facts, there is ample evidence that defendant committed multiple assaults upon both women. During the incident, defendant hit both Sheribia and Kyishia in the head with his gun. Further, defendant pointed his gun and knife at both throughout the encounter and repeatedly told them that he was going to kill them. Apart from physically striking them, defendant's threats constitute additional assaults because they placed Sheribia and Kyishia in reasonable apprehension of receiving an immediate battery. *Nickens*, *supra* at 628. Additionally, defendant went to considerable lengths to chase both Sheribia and Kyishia when they ran away from him.

Concerning the intent element, the facts support a finding that soon upon entering the condominium, defendant possessed an intent to kill Sheribia and Kyishia. Defendant's intent was manifested time and time again when he repeatedly told Sheribia and Kyishia that he would kill them and they were going to die that night. Defendant's threats were explicit and unambiguous. Further supporting his threats was the fact that defendant was armed with a gun and a knife and had struck Sheribia and Kyishia with his gun earlier in the encounter. A rational trier of fact could conclude that defendant possessed the requisite intent to murder while committing at least one of his multiple assaults against Sheribia and Kyishia. *McRunels*, *supra* at 181 (inferences and circumstantial evidence can prove an intent to kill). Moreover, had defendant killed Sheribia or Kyishia, the killings would have been murder. Accordingly, viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could find that the elements of assault with intent to murder regarding Sheribia and Kyishia were proven beyond a reasonable doubt.

Concerning defendant's third victim, Ruth McLean, the facts even more readily support a finding of assault with intent to commit murder. McLean testified that defendant stood in front of her van, pointed his gun directly at her face and told her, "I'm going to kill you." Although defendant pulled the trigger and the gun made a clicking sound, it did not fire a bullet. Apparently intent on shooting McLean, defendant reloaded his gun and once again stated, "I mean it, I'm going to kill you." Defendant fired two shots in McLean's direction, both of which

shattered McLean's windshield and one of which hit McLean in the face. On these facts, a rational trier of fact could find that defendant committed assault with intent to murder with respect to McLean.

Defendant next contends that the trial court abused its discretion in deviating from the sentencing guidelines when sentencing defendant for his three convictions of assault with intent to murder, and defendant should be resentenced. We disagree.

Whether a particular sentencing factor exists is a factual determination for the sentencing court to determine, and it will be reviewed for clear error. *People v Babcock*, 469 Mich 247, 264; 666 NW2d 231 (2003). Whether a particular sentencing factor is objective and verifiable will be reviewed de novo. *Id.* Whether the objective and verifiable factors constitute substantial and compelling reasons to depart from the statutory minimum sentence will be reviewed for an abuse of discretion. *Id.* at 264-265. An abuse of discretion occurs when the sentencing court chooses an outcome that falls outside the permissible principled range of outcomes. *Id.* at 269.

MCL 769.34(3) provides:

A court may depart from the appropriate sentence range established under the sentencing guidelines set forth in chapter XVII if the court has a substantial and compelling reason for that departure and states on the record the reasons for departure.

A substantial and compelling reason must be construed to mean an objective and verifiable reason that keenly or irresistibly grabs the court's attention, is of considerable worth in deciding the length of a sentence, and exists only in exceptional cases. *Babcock, supra* at 258. "The court shall not base a departure on an offense characteristic or offender characteristic already taken into account in determining the appropriate sentence range unless the court finds from the facts contained in the court record, including the presentence investigation report, that the characteristic has been given inadequate or disproportionate weight." MCL 769.34(3)(b).

During the sentencing hearing, the trial court discussed the challenged sentence as follows:

I've been doing this almost four years and I also agree that I've never seen anything like this.

As I said earlier, but for the grace of God, those two outstanding members of society would not be here.

I don't know what happened that night. I don't know what made you tick that night.

You know, in your statement that you made sir, you said that you just blacked out and you woke up and the police got you. I find that very hard to believe.

You had a lot of things that you said that night, a lot of actions that you did that were very calculated. You knew exactly what you were doing.

Why you did what you did that night, I have no idea, but you were a monster that night. You were going to have sex – rape those two; that young girl and that mother. You made them take their clothes off. You made the girl take her mom's clothes off and vice versa. They were naked.

You handcuffed the mother behind her back. You were going to have your way with them and then make it look like a white man did this.

The comments you made, I can't even imagine the terror that was going through these people's minds.

And then when the little girl asked if she could go to the bathroom, you said well it doesn't matter because – you said – “You're going to piss and shit on yourself anyway when you die, so it doesn't matter.”

What kind of human being acts like that?

You had absolutely no remorse for them. You apologized to me for wasting my time; I get paid by the year, sir. This is my job. I do trials. You're not wasting my time. Without people like you, I wouldn't have a job. So you don't have to apologize to me.

There's no remorse. You're a cold, stone, ruthless, insensitive, sociopath and there are no redeeming qualities for you.

And the guidelines do not take into consideration all these things about you. But any appellate court can read the transcript and know that the guidelines just don't satisfy what needs to be done.

So given all that, I am going to make an upward departure, and I think the law provides for it. I think I've stated the reasons succinctly.

* * *

And as to Counts 1, 2, and 3 [assault with intent to commit murder], life in prison.

* * *

I can assure you ladies, you're never going to see him again. He will never be released from prison. If he does, it will be a cold day in you-know-where.

A review of the sentencing transcript suggests that the moving force underlying the departure was the trial judge's view that defendant's actions were exceptionally egregious. The trial judge recounted the facts of the case, including the fact that defendant forced Sheribia and

Kyishia to undress, handcuffed Sheribia, appeared likely to rape Sheribia and Kyishia, and repeatedly told the two that he was going to kill them, using graphic language. We are satisfied that the trial court stated sufficient reasons to justify the departure.

Affirmed and remanded for the trial court to clarify defendant's armed robbery sentences. We do not retain jurisdiction.

/s/ Patrick M. Meter

/s/ David H. Sawyer

/s/ Kurtis T. Wilder